

Police Prosecutor Update

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The law permits a brief detention when a police officer believes a person has committed an infraction or an ordinance violation. It is not restricted to investigations of criminal activity. However, the United States Supreme Court has made it clear that the detention must be temporary and last no longer than is necessary to accomplish the purpose of the stop. The investigative methods employed should be the least intrusive reasonably available to verify or dispel the officer's suspicion in a short period of time. In a recent case, a police officer stopped a vehicle because he could not see its license plate. As the officer approached the vehicle, he saw a temporary plate attached to the inside of the rear window. The officer approached the driver and asked for identification. The driver identified himself, and the officer discovered that the driver's license was suspended and that he had a prior conviction of driving while suspended. The officer arrested the driver and while searching the vehicle in preparation for impoundment, the officer found cocaine.

The Court of Appeals stated that once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable and articulable suspicion that criminal activity was afoot. If the detention exceeds its proper investigative scope, any seized items must be excluded as "fruits of the poisonous tree." Here, the Court determined that once the officer observed the temporary plate in the rear window, and prior to any personal contact with the driver, the objective purpose for the detention had been satisfied. Thus, the officer was constitutionally barred from detaining the driver any further.

The State argued that displaying the temporary plate inside the rear window, instead of outside on the rear of the vehicle, is an infraction. The Indiana Supreme Court has held that this is the law with regard to permanent plates. But it recognized that the outcome could be different for temporary plates. The Court of Appeals noted that temporary plates are typically made of paper or cardboard. They would be difficult to fasten securely on the outside of a vehicle. It would also be difficult, if not impossible, to keep a paper plate in legible condition on the outside of the vehicle. Thus, in the absence of statutory language to the contrary, it is not an infraction to display a temporary plate on the inside of the rear window.

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It appears that some courts still believe that conducting a canine sniff during a traffic stop requires reasonable suspicion of criminal activity. It does not. The United States Supreme Court has so held with regard to the Federal Constitution. The Indiana Court of Appeals has recently stated that this practice is also reasonable under the Indiana Constitution. However, the traffic stop must be executed in a reasonable manner, including length of the stop.

While a canine sweep is not a search and does not require probable cause or reasonable suspicion, *upon completion* of a traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention. Thus, the critical facts in determining whether a vehicle was legally detained *at the time of the canine sweep* are whether the traffic stop was concluded and, if so, whether there was reasonable suspicion *at that point* to continue to detain the vehicle for investigatory purposes.

Case names: *Young v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2008)
State v. Gibson, ___ N.E.2d ___ (Ind. Ct. App. 2008), and Indiana Prosecuting Attorneys Handbook, Chapter 1, "Detentions Requiring Reasonable Suspicion."